

IN THE HIGH COURT OF GUJARAT
AHMEDABAD

CIVIL REVISION APPLICATION NO.2006 OF 1995

Date of Decision: 31st January, 1996

For Approval and Signature:

Hon'ble Mr. Justice : S.D. SHAH

Gujarat Machinery Manufacturers
Ltd. ... Petitioner

versus

Gandhi Iron and Steel Rolling
Mills ... Respondents

1. Whether Reporters of Local Papers may be allowed to see the judgment? ..
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr. N.K. Thakkar, Advocate for petitioner
Mr. R.C. Jani, Advocate for respondents

Coram: S.D. SHAH, J.

Date : 31-01-1996

ORAL JUDGMENT:

1. RULE. Mr. R.C. Jani waives service of rule on behalf of the respondents. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. This Civil Revision Application is directed against the order passed by Civil Judge ((J.D.)), Santrampur, below Exhibit-98 in Civil Suit No. 1 of 1986. The evidence of the plaintiff was in progress. The plaintiff's witness is stated to be fairly aged and his examination-in-chief was over. However, thereafter he was confined to bed and despite grant of number of adjournments, he could not remain present in the court as physically it was not possible for him and medically also he was not advised to move out. He, therefore, made an application at Exhibit 97 to record his further evidence by appointment of Court Commissioner. The then trial judge by order dated 22nd of August, 1994 rejected such application thereby making it impossible for the plaintiff to lead his further evidence. Thereafter number of adjournments were granted under the hope that the aged and infirm would take some time to recover from his ailment and would attend the court and would satisfy the ego of the trial court by remaining present in the court and by giving evidence. Unfortunately, his physical condition deteriorated thereafter. By the impugned order dated 21st of August, 1995, the trial court has rejected the application and has stated that despite grant of number of adjournments, the plaintiff has failed to produce his evidence and that therefore no further time could be granted to him and his evidence should be closed. It is against such order of Civil Judge (JD), Santrampur, the petitioner has approached this Court. To say the least, the order is patently illegal and against the provision of the Code of Civil Procedure. The provision made in Order 26 of the Code of Civil Procedure is in fact meant to be used in such fact situation where any of the parties is not in a position to attend the court and to give evidence before the Court. Admittedly, plaintiff was an aged person, confined to bed and medical evidence to that effect is also produced. One fails to understand as to how the trial court has taken such inhuman approach in rejecting the application and in closing the evidence of the

plaintiff. The order of the trial court is hereby quashed and set aside.

3. The trial court is directed to appoint Court Commissioner to record further evidence of the petitioner plaintiff, whose examination-in-chief is yet in progress and after such evidence is completed, to proceed further to record further evidence of the plaintiff in accordance with law. Rule is made absolute. There shall be no order as to costs.
